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P. Hrngs. \_\_\_\_\_  
Pgs. 7  
Filed: 04-12-16

Sponsored by: Fulnecky

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

COUNCIL BILL NO. 2016- 086

SPECIAL ORDINANCE NO. \_\_\_\_\_

### AN ORDINANCE

1 AUTHORIZING the City Manager, or his designee to grant a license to Springfield  
2 Community Gardens ("SCG") and its invitees allowing them to enter  
3 onto City-owned property, specifically, Fire Station No. 8 located at  
4 1405 South Scenic Avenue, for the purpose of creating, cultivating  
5 and maintaining a community garden.  
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8 WHEREAS, the City owns the property commonly referred to as Fire Station No.  
9 8 and is responsible for maintenance and management of such property; and  
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11 WHEREAS, the City has contracted with SCG to create, cultivate and maintain  
12 community gardens in accord with funds provided to the City through the Health  
13 Department's Healthy Eating Active Living in Local Communities (HEAL) Grant; and  
14

15 WHEREAS, SCG will create, cultivate and maintain the garden enlisting its  
16 invitees and agents; and  
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18 WHEREAS, the creation of a community garden at Fire Station No. 8, will be a  
19 public benefit to the surrounding community.  
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21 NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
22 SPRINGFIELD, MISSOURI, as follows, that:  
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24 Section 1 – The City Manager, or his designee, is hereby authorized to grant a  
25 license to SCG and its invitees for the purpose of creating, cultivating and maintaining a  
26 community garden at Fire Station No. 8, located at 1405 South Scenic Avenue, in  
27 substantially the for set out in the Land Use License Agreement attached hereto as  
28 "Exhibit A," and incorporated herein by reference as if fully set forth, and with such  
29 changes therein as shall be approved by the City Manager's Office, with such Officers'  
30 signatures thereon being conclusive evidence of their approval thereof.  
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32 Section 2 – This ordinance shall be in full force and effect from and after  
33 passage.

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Passed at meeting: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_, City Clerk

Filed as Ordinance: \_\_\_\_\_

Approved as to form: K. Sturkey, Assistant City Attorney

Approved for Council action: [Signature], City Manager

**EXPLANATION TO COUNCIL BILL NO. 2016- 086**

ORIGINATING DEPARTMENT: Health

FILED: 4-12-16

**PURPOSE:** To allow the Springfield-Greene County Health Department, in partnership with the Springfield Community Gardens (SCG), to develop a community garden area located at Springfield Fire Department (SFD), Fire Station No. 8, to support activities pertaining to development and implementation of this community garden; and utilizing the Springfield-Greene County Health Department's Healthy Eating Active Living in Local Communities (HEAL) grant funds to start the garden area. No budget adjustment is needed for this project.

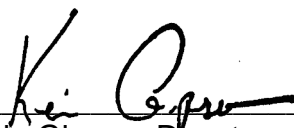
**BACKGROUND:** Current funding from the Missouri Department of Health and Senior Services (DHSS), HEAL Grant, will be used to support the activities of community garden development and initiation. The SCG organization will provide garden upkeep and maintenance thereafter. The SFD will provide garden ground space. This community project is for the purpose of improving healthy food preferences and eating habits of community members, increasing the connections between gardens and the community, and increasing the variety of fresh fruits and vegetables served to children in our community.

No budget adjustment is needed for this project.

The garden and HEAL Grant programs support the following Field Guide 2030 goal(s): Chapter 10, Public Health; Major Goal 8, Strengthen the Health Department's capacity to conduct ongoing assessments, expand core public health services and programs, and serve as a model for prevention.

**REMARKS:** This ordinance authorizes the spending of HEAL Grant funds, the partnership with SGC, and the location of a community garden at Springfield Fire Station No. 8.

Submitted by:

  
\_\_\_\_\_  
Kevin Gipson, Director of Health

Approved by:

  
\_\_\_\_\_  
Greg Burris, City Manager

# Exhibit A

<b>ROUTING ORDER:</b>	<b>(1) ORIGINATING DEPARTMENT</b>	<b>(2) ATTORNEY</b>	<b>(3) FINANCE DEPARTMENT</b>
	<b>(4) LAW DEPARTMENT</b>	<b>(5) CITY MANAGER'S OFFICE</b>	<b>(6) CITY CLERK'S OFFICE</b>
<b>EFFECTIVE DATE</b>	<b>TERMINATION DATE</b>	<b>CONTRACT NUMBER:</b>	
<b>( X ) NEW CONTRACT</b>		<b>( ) RENEWAL OF CONTRACT No. _____</b>	
<b>CITY</b>		<b>LICENSEE</b>	
<b>CITY OF SPRINGFIELD</b> <b>840 BOONVILLE, PO Box 8368</b> <b>SPRINGFIELD, MO 65801-8368</b> <b>PHONE (417) 864-1498</b> <b>ATTN: RINDA DUNN</b>		<b>SPRINGFIELD COMMUNITY GARDENS</b> <b>1126 N. BROADWAY, BUILDING A</b> <b>SPRINGFIELD, MO 65802</b> <b>PHONE: (415) 613-7806</b> <b>ATTN: MAILE AUTERSON, PRESIDENT</b>	

## LAND USE LICENSE AGREEMENT COMMUNITY GARDEN AT FIRE STATION #8

This Agreement is made and entered into between the City of Springfield (City) and the Springfield Community Gardens (SCG) on this \_\_\_\_\_ day of March, 2016.

WHEREAS, the City applied for and received the Healthy Eating/Active Living (HEAL) grant, for the purpose of increasing access to healthy foods and safe places to be physically active; and

WHEREAS, to carry out the purposes of the HEAL grant, the City desires to provide supplies to SCG to establish a new community garden, in an identified food desert region; and

WHEREAS, this is agreement is for a donation of goods only; no money will be exchanged between the City and SCG on account of this Agreement; and

WHEREAS, this Agreement establishes the terms and conditions of the SCG's and City's collaboration.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. License. The City hereby grants a license to SCG to use a portion of City property located at 1405 S. Scenic, Springfield, MO 65802 (Fire Station #8) to construct, maintain, manage, and operate a community garden (Garden) during the term of this agreement, and which includes a license to use existing parking spaces. The Garden shall be placed only at the location designated by the black box on the attached aerial view of the City property, which has been labeled "Exhibit A" and is incorporated herein as if fully set out. Parking by SCG members or its invitees shall be only in the location designated by the red star on Exhibit A.
2. SCG shall construct a path from the existing parking lot area to the Garden at the location designated by the black line connecting the parking lot and black box on Exhibit A. The path shall be constructed to Americans with Disability Act (ADA) standards.
3. City's Role. The City will provide the following to achieve the Agreement's objective:
  - a. The City will use its grant funds to provide supplies and services to SCG to assist in the establishment of the new community garden, such as hydrants, soil and tilling, sheds, water hose,

garden bed materials, and other miscellaneous gardening supplies. The City's expenditures shall not exceed the HEAL grant funds received for this purpose, in the amount of \$12,700.

- b. The City will promote neighborhood involvement with the new community garden.
- c. The City will develop a timeline for garden construction and assist SCG in recruiting workers and volunteers for garden construction.
- d. The City will develop and implement evaluation tools to determine the reach and impact of the community gardens.

4. SCG's Role. SCG will provide the following to achieve the Agreement's objective:

- a. SCG will secure appropriate permissions to establish a new community garden at the site selected.
- b. SCG will establish the new community garden, using the supplies provided by the City under this Agreement. If any supplies are provided by SCG, such materials may be retrieved by SCG upon the permanent closure of the Garden, with the exception of the garden soil, provided that SCG removes such materials within 14 days of the permanent closing of the Garden.
- c. SCG will take primary responsibility for promoting neighborhood involvement with the new community garden.
- d. SCG will follow the timeline developed by the City for garden construction.
- e. SCG will take primary responsibility for recruiting workers and volunteers for garden construction.
- f. SCG is responsible for the upkeep and maintenance of the Garden in a manner the City deems attractive.
- g. SCG will cooperate with the City in conducting evaluation of the community gardens.
- h. SCG will not harm any trees or shrubs now existing on the property.
- i. When the agreement expires or is terminated, SCG will return the property to its original condition by replanting grass and removing above ground planters and fixtures, unless the City requests in writing for any portion to be left as is.
- j. SCG agrees that the City must pre-approve all signs, promotional information, or news releases that use the City's name, image, or logo.

5. Term and Termination. This agreement shall be in full force and effect from the date of execution to September 30, 2016. Modifications and provisions of this agreement shall only be valid when they have been reduced to writing, signed and dated by both parties. Both parties agree to renegotiate the agreement if Federal and/or State revisions of applicable laws or regulation make the changes necessary. This agreement may be terminated by either party without cause with at least sixty (60) days written notice.

6. Liability and Indemnification. SCG agrees to indemnify and save harmless the City from all damages, claims, and attorney fees arising out of any act, omission, or neglect by the SCG or any of its participants, volunteers, or invitees, and from any and all actions or causes of action arising from the SCG or any of its participants, volunteers, or invitees' occupation or use of the designated Garden.

7. Insurance. SCG shall during the entire term of this Agreement, keep at its sole expense in full force and effect a policy of public liability insurance with limits not to be less than One Million Dollars (\$1,000,000) per incident. The policy shall name the City as an additional insured and shall contain a clause that the insurer will not cancel or change the insurance without first giving thirty days prior written notice to the City. A copy of the policy or certificate of insurance shall be delivered to the City prior to the execution of this Agreement.

8. Non-discrimination. The parties agree in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

- a. **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**
- b. **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

9. Independent Contractor Clause. This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that SCG will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. SCG will retain sole and absolute discretion in the judgment of the manner and means of carrying out SCG's activities and responsibilities hereunder. SCG agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between SCG and the City, and the City will not be liable for any obligation incurred by SCG, including but not limited to unpaid minimum wages and/or overtime premiums.
10. Notices. Any notices required or permitted herein under and required to be in writing may be given by FAX or by first-class mail addressed to City and SCG at the addresses shown below. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

City  
227 E. Chestnut Expressway  
Springfield, MO 65802  
Phone: 417-864-1498  
Attn: Rinda Dunn

SCG  
1126 N. Broadway, Building A  
Springfield, MO 65802  
Phone: 415-613-7806  
Attn: Maile Auterson, President

11. Jurisdiction. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Greene County, Missouri.
12. Conflict of Interest. SCG represents in entering into this Agreement that no personal conflict of interest exists by any employee, agent or officer of SCG, nor does any employee, agent or officer have any personal financial interest, direct or indirect, in this Agreement for the property referenced herein.
13. Non-Assignment. Licensee shall not assign any interest in this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto.
14. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

IN WITNESS WHEREOF, the City and SCG caused this agreement to be executed by their proper officers, in triplicate, the day and year first written above.

**CERTIFICATE OF DIRECTOR OF FINANCE**

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefore.

\_\_\_\_\_  
Mary Mannix-Decker, Director of Finance

APPROVED AS TO FORM:

\_\_\_\_\_  
Kelby Stuckey, Assistant City Attorney

**SPRINGFIELD COMMUNITY GARDENS**

By: \_\_\_\_\_

\_\_\_\_\_  
Name & Title

**CITY OF SPRINGFIELD, MISSOURI**

By: \_\_\_\_\_  
Collin Quigley, Asst. City Manager